

REMARKS

Applicants respectfully request entry of the amendment and reconsideration of the claims. Claims 1-3 have been amended. Claims 6-7 have been canceled without prejudice or disclaimer. Claims 8-10 are newly presented. After entry of the amendment, claims 1-5 and 8-10 will be pending.

Applicants submit the amendment is supported through the specification, including for example at page 2, lines 2-24 and Examples 3 and 4, and does not introduce new matter.

Claim Objections

The Examiner objected to the bullets in claims 1-5 and suggested amending the bullets to letters. The Examiner also objected to a typographical error in claim 2. The claims have been amended as suggested by the Examiner. Withdrawal of the objection is respectfully requested.

35 U.S.C. § 101

Claims 6-7 were rejected under 35 U.S.C. § 101 as being an improper process claim. Claims 6-7 have been canceled without prejudice or disclaimer. The rejection is therefore moot. Withdrawal of the rejection is respectfully requested.

Written Description

Claims 1 and 4-5 were rejected under 35 U.S.C. § 112, first paragraph as lacking written description. The Office Action alleges the specification does not adequately describe ingredients with lipolytic and venotonic effects. Applicants respectfully traverse this rejection.

To satisfy the written description requirement, a patent specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention. MPEP § 2163(I) (emphasis added). An Applicant may show possession of an invention by disclosure of sufficiently detailed, relevant identifying characteristics (i.e. complete or partial structure, other physical and/or chemical properties, functional characteristics when coupled with a known or disclosed correlation

between structure and function, or some combination of such characteristics) that provide evidence that Applicant was in possession of the claimed invention. *Enzo Biochem v. Gen-Probe*, 323 F.3d 956, 964 (Fed. Cir. 2002); MPEP § 2163(II)(3)(A)(a). An actual reduction to practice, however, is not required for written description. *Falkner v. Inglis*, No. 05-1324, slip. op. at 13 (Fed. Cir. May 26, 2006).

The written description requirement must be applied in the context of the particular invention and state of the knowledge. *Capon v. Eschar*, 76 USPQ2d 1078, 1084 (Fed. Cir. 2005). It is unnecessary to spell out every detail of the invention in the specification. Only enough must be included to convince a person of skill in the art that the inventor possessed the invention. *Falkner v. Inglis*, No. 05-1234, slip. op. at 14 (Fed Cir. May 26, 2006) (citing *LizardTech, Inc. v. Earth Resource Mapping, PTY, Inc.*, 424 F.3d 1336, 1345 Fed. Cir. 2005).

As described in paragraphs 9 to 12 of the present application, tripeptide glycyl-histidyl-lysine aids in the quenching of reactive carbonyl species (RCS) which are formed in decomposition processes in the cells by means of the application of agents with a lipolytic effect. No matter which lipolytic agent is administered to accelerate fatty acid decomposition, this acceleration results in the formation of numerous compounds within the cells, some of which may be harmful or toxic for the cells. Numerous lipolytic agents are known. The particular nature of the lipolytic agent is independent of the subject matter of the specification, since the common characteristics for all of the lipolytic agents are the acceleration of the fatty acid decomposition, and the resulting formation of harmful or toxic reactive carbonyl species as by-products. Therefore, it would be clear to one of skill in the art that Applicants were in possession of the invention as claimed.

Withdrawal of the rejection is respectfully requested.

Enablement

Claims 1-5 were rejected under 35 U.S.C. § 112, first paragraph as lacking enablement. The Office Action acknowledges the claims are enabling for a composition for treating cellulite. The Office Action, however, alleges the claims do not enable a composition for preventing cellulite. Without acquiescing to the rejection and solely for the purpose of advancing

prosecution, Applicants have amended the claims to recite only treating cellulite. Applicants reserve the right to pursue the canceled subject matter in a continuation application. Withdrawal of the rejection is respectfully requested.

35 U.S.C. § 112, second paragraph

Claims 6-7 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite. Claims 6-7 have been canceled without prejudice or disclaimer. The rejection is therefore moot. Withdrawal of the rejection is respectfully requested.

35 U.S.C. § 103

Claims 1 and 4 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gupta (US 2004/0146439) in view of Marquart. Applicants respectfully traverse this rejection.

Applicants unexpectedly and surprisingly found that GHK quenches harmful or toxic aldehydes and other reactive carbonyl species generated in decomposition processes in cells as a result of the application of agents with a lipolytic effect. See, for example, the specification at page 2, lines 2-24 and Examples 3 and 4. The cited combination of references does not teach or suggest a composition that reduces the harmful or toxic effect of reactive carbonyl species or a composition comprising a quenching agent of reactive carbonyl species.

Withdrawal of the rejection is respectfully requested.

Claims 1-5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gupta, Marquart, and newupproducts.com in view of Lambers (WO99/29293). Applicants respectfully traverse this rejection.

The combination of Gupta and Marquart do not render the claims obvious for the reasons discussed above. Lambers and newupproducts.com do not cure the deficiencies of Gupta and Marquart. Neither reference teaches or suggests the quenching activity of GHK or the recited amounts of GHK to reduce or quench the harmful or toxic effect of reactive carbonyl species.

Withdrawal of the rejection is respectfully requested.

Conclusion

In view of the above amendments and remarks, Applicants respectfully request a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

MERCHANT & GOULD P.C.
P.O. Box 2903
Minneapolis, Minnesota 55402-0903
(612) 332-5300

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Brian H. Batzli
Reg. No. 32,960
BHB:EED:jrm

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